

**HUP SAN TIMBER TRADING CO. SDN. BHD. v. A
TAN AH LAN**[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman &
Chang Min Tat F.J.J.) November 6 & 30, 1978][Kuala Lumpur — Federal Court Civil Appeal
Nos. 47 & 49 of 1978]*Practice and Procedure — Trial — Party absent but producing medical certificate — Medical certificate not in proper form — Doubt as to inability to be present — Adjournment should have been granted.*

In these cases the respondent had agreed to carry goods for or in connection with the appellant's logging business. The respondent sued the appellant for breach of the agreement and also for damages for services rendered. At the trial appellant was absent but produced a medical certificate from a Singapore private medical practitioner. The medical certificate was not in the prescribed form. The learned trial judge allowed the respondent to adduce evidence and to sign judgment. The appellant appealed.

Held: as the learned trial judge was in some doubt as to the real reason behind the inability of the appellant to attend court, he should have allowed an adjournment to enable both parties to be given an opportunity to be heard. Any delay occasioned by what appeared to be an inadequate reason for absence could be compensated by an award of appropriate costs.

FEDERAL COURT.*Thara Singh* for the appellant.*S. Sivasubramanian* for the respondent.*Cur. Adv. Vult.*

Wan Suleiman F.J. (delivering the judgment of the Court): These two appeals are between the same parties and arose out of two agreements entered into between the parties both on February 10, 1974.

In Civil Appeal No. 47/78, the respondent/plaintiff had agreed for reward to carry goods for or in connection with appellant/defendant's logging business. Respondent was suing for damages for breach of the agreement, alleging that appellant had failed to or refused to employ the plaintiff as carriers but had employed others as carriers. The action came up for hearing on March 14, 1978. Plaintiff and counsel were present. So was appellant's counsel but appellant was absent. A medical certificate issued by a Singapore private medical practitioner was tendered.

Counsel for respondent objected on the ground that it was not in accordance with P.U.(A) 376 which was in a prescribed form, which *inter alia* required the doctor signing to state what the patient was suffering from in addition to the fact that he was unfit to attend court. The learned judge felt that this was to prevent malingering. The medical certificate produced Exhibit P(1) did not state what the patient was suffering from, but merely that he would be unfit to attend to duty for 3 days — from the 13th to the 15th (of March), the very two days on which the two connected suits had been fixed for hearing.

The learned judge "strongly suspected" that the medical certificate and the absence of the appellant on the day of the trial was not just coincidence. He had formed his suspicions because of what counsel for respondent had stated, it would appear, from the Bar. It seems that in another case in Johore Bahru appellant had failed to attend court on the date of hearing, advancing as an excuse the fact that he had been

barred i.e. by the immigration authorities from entering this country, in consequence of which evidence *de bene esse* was taken from him in Singapore and adduced in evidence.

We are unable to understand exactly why the learned judge subsequently proceeded under Order 36 rule 31, because at page 24 of the Grounds it looks very much as if he had two possibilities for appellant's absence in mind viz. (i) he was really indisposed as stated in the medical certificate or (ii) he had difficulties with the immigration authorities and therefore was unable to enter this country.

We would with respect say that either of these reasons would be sufficient grounds for an adjournment of the hearing.

In Civil Appeal No. 49 of 1978, an action for damages for services allegedly rendered by respondent/plaintiff to the appellant came up for hearing on the following day (March 15, 1978). The same counsel represented the parties and the same reason advanced by appellant's counsel for his absence. On identical grounds respondent/plaintiff was allowed to adduce evidence and to sign judgment.

No doubt failure by appellant to obtain a medical certificate containing the appropriate information in a form so prescribed as to remove suspicion that he was trying to delay proceedings has inclined the learned trial judge to allow this rather drastic measure. But it seems to us that in this instance the judge was in some doubt as to the real reason behind his inability to attend court. On occasions of doubt such as the present one the guiding principle should be that both parties should be given an opportunity to be heard. Any delay occasioned by what appears to be an inadequate reason for absence can be compensated by an award of appropriate costs.

We would therefore allow this appeal, set aside the order made by the court below. Cost of this appeal to the appellant in any event.

*Appeal allowed.*Solicitors: *Wong & Paramjothy; S. Sivasubramanian.***ALEYKUTTY JAMES v.
SYED PUTRA BIN SYED OMAR SHAHABUDIN
& ANOR.**

[O.C.J. (Gunn Chit Tuan J.) March 10, 1978]

[Alor Star — Civil Suit No. 609 of 1977]

Practice and Procedure — Appearance and defence filed out of time — Facts in dispute — Applicability of O. 12 r. 22, R.S.C. 1957 — R.S.C. 1957, O. 3 r. 6, O. 12 r. 22, O. 27 r. 11.

The plaintiff alleged that she was the lawful tenant of a piece of land together with the school building erected on it and that the said building was controlled premises. The defendants were the registered co-owners of the said land and school building which were transferred to them by their mother, A, in or about November 1977. The plaintiff claimed that she had been the monthly tenant of the land and school building since January 1968 paying a monthly rental to A until November 1977 and she had paid the rent due for December 1977 to A as agent of the defendants. The plaintiff claimed *inter alia*, for an injunction to restrain the defendants from taking possession of or evicting the plaintiff